PUBLIC PROSECUTOR

v.

CHOK SOI LAN

HIGH COURT MALAYA, SEREMBAN
ABDUL RAZAK J
[CRIMINAL APPEAL NO. 21 OF 1981]
1 SEPTEMBER 1981

CRIMINAL PROCEDURE: *Charge of offence under s. 4(b) Prevention of Corruption Act 1961 - Respondent acquitted and discharged by Court without defence being called - Whether the President had erred in his finding of fact and in his understanding of the burden of proof required of the prosecution - How far credibility of witness affected by contradiction in evidence - Importance of motive for any materiality of contradictions.*

The appeal was by the Public Prosecutor against the decision of the learned President of the Sessions Court, Seremban, to acquit and discharge the respondent for an offence under s. 4(b) of the Prevention of Corruption Act 1961, without calling for his defence. The respondent had been charged with corruptly giving gratification of RM50 cash to a police constable as an inducement to refrain from taking action against the respondent for an offence of assisting in the carrying on of illegal character lottery under s. 4(1)(c) of the Common Gaming Houses Ordinance 26 of 1953, thereby committing an offence punishable under s. 4(b) of the Prevention of Corruption Act 1961.

The appellant gave several reasons in his grounds of appeal why the appeal should be allowed, but the learned Judge held that he needed to confine himself to the following two only:

(a) That the learned President had erred in law in holding that PW1 was an accomplice and as such his evidence must be corroborated and

(b) That the learned President erred in concluding that he was unable to come to a specific finding of fact and consequently he had erred in his understanding of the burden of proof that is required of the prosecution in a criminal proceeding.

As to the first ground the respondent conceded that PW1 was not an accomplice.

Regarding the second ground the learned Judge Abdul Razak bin Dato'Abu Samah J held that the President had erred in determining the manner in which the credibility of witnesses should be viewed, allowing thus his mind to be influenced by factors which otherwise should not have affected him.

Held:

[1] The learned President had held that he could not come to a specific finding of fact that the respondent did give or pay the RM50 to PW1. This was because of the several material contradictions by PW1 and PW2 and between the two of them as to make them unreliable witnesses as these contradictions affected their credibility.

Though there were a number of contradictions, in fact more than had been noted by the learned President himself, in order to rely on the evidence of a witness, the Court should however be concerned more with the reason or motive the witness may have had for stating what appeared to be a falsehood than by the number of contradictions in his evidence.

Appleton J, said in *Parsons v. Huff* (41 Me 411) that,

> The truth or falsehood of testimony depends upon the motives, or the balance of motives, acting upon the witness at the time of its utterance... It is obvious therefore that, of the testimony of the same witness, part may be true and reliable and part false and mendacious. A rule of law which requires a jury to infer from one false assertion that all facts uttered by the witness are false statements, is manifestly erroneous.

What is to be emphasised is falsity on material aspects and substantial points.

[2] On one reason alone it would appear that the contradictions which the President had held to be material cannot be so vital as to discredit the prosecution's story altogether and the witnesses who had testified to it. This related to the fact that the respondent had never denied that the RM50 note was possessed by him before he was arrested. He merely denied he had given the note to PW1, stating that PW1 might have mistakenly thought that he was giving a bribe to him, PW1, when he took out the RM50 note. The learned President should also have considered such relevant facts as to why the respondent had taken out the RM50 note at all or why he had taken out only that RM50 note when he had more than RM50 with him. All these facts should have been considered against the evidence by PW1 and others that the respondent had given PW1 the RM50 note. There would then have been no reason, in spite of the contradictions, to disbelieve PW1 and PW2.

[3] Once it was proved that the RM 50 note was received by PW1, then the presumption under s. 4 of the Prevention of Corruption Act 1961 would immediately arise that the respondent gave it corruptly and it would become incumbent upon him to rebut it.

The learned Judge allowed the appeal, set aside the order of acquittal and discharge and ordered that the respondent be called to make his defence.

Cases referred to:
Parsons v. Huff 41 Me 411

Legislation referred to:
Prevention of Corruption Act 1961, s. 4, (b)
Common Gaming Houses Ordinance 1953, s. 4(1)(c)

For the applicant - Balia Yusof bin Wahi
For the respondent - James Ponniah

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Also found at [1982] CLJ 40